

AN ACT

relating to the use of powers of attorney in certain motor vehicle transfers; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 501, Transportation Code, is amended by adding Section 501.076 to read as follows:

Sec. 501.076. LIMITED POWER OF ATTORNEY. (a) An owner who has a contractual option to transfer ownership of a vehicle in full or partial satisfaction of the balance owed on the vehicle, as provided in Section 348.123(b)(5), Finance Code, may execute a written limited power of attorney that authorizes an agent to complete and sign for the owner, and provide to the transferee, the form to transfer the title under Section 501.071 and the odometer disclosure under Section 501.072, and the other documents necessary to transfer title.

(b) The owner may execute the limited power of attorney at the time the owner enters the contract giving the owner the option to transfer the vehicle or at any time after that date. The limited power of attorney may only be used if an owner elects to transfer the vehicle in full or partial satisfaction of the contract and may not be used by the holder of the contract as part of the holder's exercise of a remedy for a default by the owner under the contract.

(c) The person named as the agent in the limited power of attorney must meet the following requirements:

1 (1) the person may be a person who has been appointed
2 by the commissioner's court as a deputy to perform vehicle
3 registration functions under Section 502.112, a license vehicle
4 auction company holding a wholesale general distinguishing number
5 under Section 503.022, a person who has a permit similar to one of
6 the foregoing that is issued by the state in which the owner is
7 located, or another person authorized by law to execute title
8 documents in the state in which the owner executes the documents;
9 and

10 (2) the person may not be the transferee or an employee
11 of the transferee. The person may not act as the agent of both the
12 transferor and transferee in the transaction. For the purposes of
13 this section, a person is not the agent of both the transferor and
14 transferee in a transaction unless the person has the authority to
15 sign the documents pertaining to the transfer of title on behalf of
16 both the transferor and the transferee.

17 (d) If a limited power of attorney is used under Subsection
18 (a), the holder of the contract shall accompany the power of
19 attorney with a written statement that the vehicle was returned at
20 the election of the owner in full or partial satisfaction of the
21 owner's obligations under the contract and not as the result of the
22 exercise by the holder of the contract of its remedies for default.

23 (e) A signed and dated written odometer disclosure
24 containing the information described in this subsection may be
25 included on or with the power of attorney if the power of attorney
26 is executed within 120 days before the date of the transfer and is
27 accompanied by the conspicuous written notification described in

1 this subsection. If an odometer disclosure is not obtained in that
2 manner, the transferee or agent or the person to whom the vehicle is
3 delivered at the time of the transfer shall request an odometer
4 disclosure as provided in this subsection. Not more than 120 days
5 before the transfer of the vehicle by the owner, the transferee or
6 agent under the power of attorney or person receiving delivery of
7 the vehicle shall in writing request the owner to provide a signed
8 and dated written statement stating the odometer reading (not to
9 include tenths of a mile) as of the date of the statement, and
10 further stating words to the effect that either: (i) to the best of
11 the owner's knowledge, the odometer reading reflects the actual
12 mileage of the vehicle; (ii) the actual mileage has gone over the
13 odometer's mechanical limits and the odometer reading reflects the
14 amount of mileage in excess of the mechanical limits of the
15 odometer, if the owner knows that to be the case; or (iii) the
16 odometer reading is not the actual mileage, if the owner knows that
17 to be the case. The statement may consist of a form in which the
18 agent or transferee or person receiving the vehicle includes the
19 identification of the vehicle and owner and which allows the owner
20 to fill in the odometer reading and mark an applicable box to
21 indicate which of condition (i), (ii), or (iii) is applicable and to
22 date and sign the statement. With the request for the owner's
23 statement, the transferee or agent or person receiving the vehicle
24 shall provide a written notification to the owner to the effect that
25 the owner has a duty under law to state the odometer reading, state
26 which of conditions (i), (ii), or (iii) is applicable, and sign,
27 date, and return the statement and that failing to do so or

1 providing false information may result in fines or imprisonment.
2 Unless the written notification is delivered to the owner at
3 substantially the same time that the owner is delivering the signed
4 and dated owner's statement, the written notification must also
5 state a date by which the owner must provide this information and an
6 address to which it may be delivered. This written notification to
7 the owner must be in bold letters, underlined, or otherwise
8 conspicuous and may be in a separate document or included as part of
9 a form to be used for the owner's statement or in another document
10 relating to the potential transfer. The transferee or agent or the
11 person receiving delivery of the vehicle may mail the request and
12 notification to the last known address of the owner or may otherwise
13 send or deliver it to the owner. If there are multiple owners of the
14 same vehicle, the request and notification may be sent to one or
15 more of them and it shall be sufficient for one owner to sign the
16 statement. The owner has a duty to return the signed and dated
17 statement as directed in the notification. In completing the
18 odometer disclosure on the owner's behalf, the agent shall identify
19 the same condition (i), (ii), or (iii) provided in the owner's
20 statement, unless the agent knows that the condition identified in
21 the owner's statement is not correct. The agent will not indicate
22 in the odometer disclosure it completes on the owner's behalf that
23 the odometer reading is not the actual mileage unless either the
24 owner has so indicated in the owner's statement or the agent knows
25 that the owner's statement is not correct. The agent shall transmit
26 the owner's statement it receives to the transferee after the title
27 transfer is completed. The owner's statement received by the

1 transferee under this subsection need not be filed with the filing
2 office for the other title documents, but the transferee shall
3 retain the owner's statement for a time period and in a similar
4 manner to the retention methods used by a lessor to retain
5 statements under 49 C.F.R. Section 580.8(b), as it may from time to
6 time be amended. The transferee may rely upon the agent's odometer
7 disclosure and the owner's statement unless it knows that they are
8 not correct. A failure by an owner to comply with an obligation
9 under this subsection subjects the owner to the penalties and
10 enforcement provisions of Subchapter H but does not affect the
11 validity of the transfer of title.

12 (f) This section does not in any way impair or impede any
13 transfers made through use of a power of attorney prior to the
14 effective date of this section, and such transfers shall continue
15 to be valid if they comply with the provisions of this section or
16 would otherwise comply with the law in effect prior to the effective
17 date of this section. This section does not apply to powers of
18 attorney authorized under federal law or regulation that authorize
19 a transferee to act as the agent of the transferor under certain
20 circumstances or to powers of attorney otherwise authorized by the
21 law of this state. This section does not affect the use of powers of
22 attorney to sign, complete, and deliver the form to transfer title
23 and other documents necessary to transfer title, including the
24 odometer disclosure, in title transfers other than those described
25 in Subsection (a).

26 (g) The power of attorney created in this section shall be
27 limited for the purposes and duration specified in this section.

1 SECTION 2. This Act takes effect September 1, 2003.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1507 passed the Senate on May 1, 2003, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 20, 2003, by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 1507 passed the House, with amendment, on May 10, 2003, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor